



COMMONWEALTH of VIRGINIA

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May 12, 2003

MEMORANDUM

TO: Members, Joint Legislative Audit and Review Commission

FROM: Phil Leone, Director 

SUBJECT: 2003 Legislative and Executive Impact of JLARC Studies

A number of significant actions were taken by the 2003 General Assembly and the executive branch in response to JLARC reports and recommendations. Given the State's fiscal challenges, several special reports prepared by the Fiscal Analysis Section identified a number of promising proposals for generating increased savings and revenues. Other JLARC studies were requested by the Commission in response to critical organizational, management, and operational issues facing State agencies in such areas as information technology, health care, charitable gaming, and workforce training.

This memorandum summarizes recent legislative and executive actions taken in response to these studies. We believe that these actions demonstrate the confidence of the General Assembly in JLARC's independent and objective oversight work.

GENERAL FUND SAVINGS AND REVENUE ATTRIBUTABLE TO JLARC SPECIAL REPORTS

During 2002, JLARC staff generated five special reports at the direction of the Commission. The reports covered topics such as the secretarial system, tax compliance, higher education, State business incentive grant programs, and State spending on medical supplies and pharmaceuticals.

The reports on tax compliance, pharmaceuticals, and higher education appear to have had significant fiscal impact. This memo recaps the actions taken by the 2003 General Assembly on the reports' recommendations. More than \$67 million in FY 2004 savings and new revenue stem, at least in part, from these reports, as indicated in the following table.

General Fund Savings and Revenue Attributable
To JLARC Special Reports
(FY 2004: \$ in millions)

	<u>General Assembly Actions</u>		
	<u>Savings</u>	<u>Net New Rev.</u>	<u>Total</u>
Tax Compliance	\$ --	\$51.5	\$51.5
Pharmaceuticals	13.45	--	13.45
Higher Education	2.28	--	2.28
Total	\$15.73	\$51.5	\$67.23

Tax Compliance

Issued in October 2002, this report made six recommendations to strengthen compliance with Virginia's tax laws. Four of the recommendations were for changes to the *Code of Virginia*, and all were introduced in the 2003 General Assembly.

Tax Amnesty. The JLARC special report recommended a tax amnesty modeled on the 1990 Virginia amnesty. The report suggested that \$51 to \$66 million might be generated from an amnesty. The Commissioner of the Department of Taxation opposed an amnesty in his written response to the report, suggesting that an amnesty would delay implementation of a new computer system which could cost \$15 million or more.

Governor Warner endorsed a tax amnesty in the budget bill he introduced to the 2003 General Assembly. He included \$39.3 million in new general fund revenue attributable to the amnesty, and provided \$7 million to administer it. Subsequently, the Tax Commissioner endorsed a tax amnesty program.

Two amnesty bills passed the General Assembly, HB 2454 (Parrish) and SB 1030 (Chichester). These bills authorize a tax amnesty period during FY 2004, and further authorize the Tax Commissioner to contract for the administration of the amnesty. Both House Appropriations and Senate Finance

Committees increased the amount of revenue to be collected by the amnesty; the House raised it by \$5.6 million (to \$44.9 million) and the Senate raised it by \$6.3 million (to \$45.6 million).

The budget conferees agreed to increase the amnesty-generated revenue by \$9.2 million, to a total of \$48.5 million. Of this additional amount, \$1.5 million was proposed by the Governor as an amendment to the introduced bill (the Commissioner said this corrected an error on the Department's part). The remaining \$7.7 million came from the legislature's modification of assumptions underlying the amnesty and compliance initiatives. The \$48.5 million figure is included as revenue in the Appropriation Act as signed by the Governor.

Failure to File. The report pointed out that failure to file an income tax return carried a criminal penalty of a Class 1 misdemeanor, the same penalty as for petit larceny, defined as the theft of less than \$200 worth of property. The recommendation was to change the penalty to a felony. The higher penalty would emphasize the serious nature of the offense, and improve the fundamental fairness of Virginia's tax system.

Delegate Parrish introduced a bill to accomplish this penalty change (HB 1576). The fiscal impact statement indicated a negligible impact. The bill passed and was signed by the Governor, becoming Chapter 180 of the 2003 Acts of Assembly. According to Taxation Department staff, this was not an Administration initiated bill.

Additional Staff. The report recommended additional tax staff, noting that the number of audit staff in the Department of Taxation had declined 31 percent between FY 1995 and FY 2002, although the number of tax returns had risen significantly, as had total tax collections. Additional audit staff could further enhance compliance and generate additional revenue, the report stated.

The budget bill provided 117 additional staff in the Department of Taxation, 75 of whom will be tax auditors and collections staff. The Tax Commissioner has indicated that these positions are expected to generate \$21.3 million in new general fund revenue during FY 2004. This staffing initiative was included in the budget bill as introduced, at a cost of \$11.3 million. The budget conference committee added another 7.5 staff positions (but no additional funding) to this initiative, for a total of 124.5 compliance-related positions. These higher numbers are included in the Appropriation Act as signed by the Governor.

State Spending on Medical Supplies and Pharmaceuticals

Three of the recommendations from the JLARC special report on medical supplies and pharmaceuticals resulted in significant 2004 budget savings:

- Implementation of a preferred drug list (PDL) by the Department of Medical Assistance Services (DMAS), with savings of \$9 million in general funds in FY 2004, and approximately \$18 million in general funds annually thereafter.
- Reduction in the retail pharmacy dispensing fee paid by DMAS from \$4.25 to \$3.75, with savings of \$2 million in general funds.
- Replacement of the current single-tiered prescription drug plan for State employee health care with a three-tiered prescription drug co-payment structure (\$15, \$20, and \$35), saving \$900,000 in FY 2004 general funds.

In addition, the conference committee included language expanding nonprofit hospital participation in the 340B drug discount program, as recommended in the JLARC report. This action is estimated to save the Medicaid program \$750,000 in general funds in FY 2004. The conference report also reduced the budget of the Department of Corrections by \$800,000 in FY 2004 general funds, based on savings that could be achieved through the agency's participation in the 340B drug discount program. These actions could result in an estimated savings of \$1.55 million in general funds.

Higher Education

The report on higher education noted that the special purpose research institutes and public service centers at most of Virginia's institutions of higher education offered some potential for savings. The report noted that the General Assembly has repeatedly indicated that these entities should seek non-general fund sources of support.

The budget conference report reduced general fund support for special purpose research institutes and public service centers by \$2.28 million. This was a compromise between the Senate's reduction of \$1.10 million and the House's reduction of \$4.76 million. Six centers had their funding eliminated in the conference report and twelve centers had no funding reductions. None of the

institutes or centers at Norfolk State University or Virginia State University were reduced, and the Aquaculture Genetics and Breeding Program at the Virginia Institute for Marine Science actually received an increase in general funds of \$50,000. The Governor recommended restoring funds to one center (the Virginia Labor Center at Virginia Commonwealth University), but this was rejected at the Veto Session.

LEGISLATIVE IMPACT OF CURRENT AND PAST JLARC STUDIES

Several JLARC studies required major legislative initiatives to implement staff recommendations. A 1999 study of Virginia's health regulatory boards, for example, addressed the regulation of doctors by the Board of Medicine. This report provided the basis for legislation enacted during the 2003 General Assembly that significantly reformed the regulation of doctors in Virginia. Studies resulting in legislative actions are summarized below.

Information Technology Systems Development

During 2002, JLARC staff completed a review of information technology (IT) systems development in Virginia at the request of the Commission. The study found that many IT projects have failed in recent years, wasting more than \$100 million dollars. The report identified the need for stronger central direction and oversight of systems development and included 18 recommendations to improve the State's IT systems development process.

These recommendations formed the basis for HB 1926 (Nixon) and SB 1247 (Stosch), enacted during the 2003 General Assembly that significantly reforms the governance structure and process for IT systems development and management in Virginia. The recently enacted legislation fully implements 13 of the 18 recommendations in the report and partially implements four of the remaining JLARC recommendations.

Two key recommendations implemented through the legislation include the creation of an information technology investment board and a separate and independent chief information officer (CIO). The IT investment board will serve to improve central approval and oversight of major IT projects, provide a structure for prioritizing projects for investment, and provide greater

accountability for IT systems development. The establishment of a separate full-time CIO position with responsibility for leading the development and management of information systems will provide a single individual who is ultimately accountable for the development and management of information technology. The CIO can provide professional leadership and continuity in IT across gubernatorial administrations.

Another key JLARC recommendation that was implemented through this legislation includes the establishment of a formalized process for the management and funding of major IT projects.

Birth Injury Program Modifications

In response to a Commission directive, staff conducted a review of the Virginia Birth-Related Neurological Injury Compensation Program (birth injury program) during 2002. The birth injury program pays for the medical and certain other expenses of children who have severe neurological injuries resulting from the birthing process. It is intended as an alternative to the tort system for obtaining compensation for injuries.

The JLARC staff report presented a series of programmatic changes that would be needed if the General Assembly chose to maintain the birth injury program. Subsequently, legislation was passed in the 2003 Session that implemented most of the report's recommendations. Of the 24 recommendations requiring legislation, 17 recommendations were fully implemented and an additional four recommendations were partially implemented through the legislation. HB 2048 (Woodrum) and HB 2307 (Devolites) enact a number of study recommendations aimed at (1) improving the eligibility determination process, and (2) increasing accountability and oversight of the program.

Virginia Board of Medicine Reforms

During 1998 and 1999, JLARC staff conducted a review of Virginia's health regulatory boards. The most significant finding of the study was that the Board of Medicine does not adequately protect the public from doctors who provide substandard care in the treatment of patients. Other key findings were that the disciplinary system takes too long to resolve many cases, eligibility standards for reinstatement of licensees are not uniform across professions and

are too lenient, and instances of unlicensed practice often are not prosecuted. The JLARC report included 19 recommendations to improve the regulation of health professionals.

These recommendations served as the basis for HB 1441 (Sears) enacted during the 2003 General Assembly session that significantly reforms the regulation of doctors. The most significant recommendation adopted through this legislation changes the standard for a violation of law in the treatment of patients from gross to simple negligence. Under the current gross negligence standard, doctors who provide substandard care to patients are rarely disciplined for this conduct. With the new simple negligence standard imposed by the legislation, the Board of Medicine will be required to address cases in which there is evidence presented that a doctor has provided substandard care. The legislation also enacts a JLARC recommendation that the Board of Medicine be required to investigate all reports or complaints received about doctors regardless of the source of information. The JLARC study found that many reports submitted to the Board of Medicine indicating that doctors likely provided substandard care in the treatment of patients were closed without an investigation.

The recently enacted legislation also adopts several recommendations that apply to the regulation of health care professionals more generally. The legislation establishes a uniform requirement for all health professions that any licensees who have had their licenses revoked be required to wait three years before they are eligible to seek reinstatement of their licenses. Under current law some licensees, such as doctors, may seek reinstatement of their licenses within a year of revocation. The legislation also requires the Department of Health Professions to include more extensive information in its biennial report about case processing times and the types of cases in which sanctions are imposed by the health regulatory boards. This will enable the General Assembly and the general public to more effectively monitor the types of cases in which the boards are taking disciplinary action or failing to take action and whether the time required to resolve disciplinary cases continues to be excessive. Finally, the legislation adopts the JLARC recommendation that the Department of Health Professions be given more authority to pursue cases of unlicensed practice that are not prosecuted by Commonwealth's attorneys. The JLARC study found that there are many cases in which persons practicing health care without the appropriate license are not prosecuted and, instead, these cases are closed by the Department of Health Professions without any action.

Charitable Gaming Commission

In May 2002, JLARC approved an Administration request to study the Charitable Gaming Commission (CGC), the agency charged with regulating charitable gaming activities in the Commonwealth. The study focused on the adequacy of the organization and management structure of the CGC, as well as the agency's resources and staffing. The study team found that, overall, the CGC has been successful in achieving its primary objectives: the prevention of gaming fraud and increasing the percentage of gross gaming proceeds that are used for charitable purposes. JLARC staff also found that, with some exceptions, the CGC's oversight activities are perceived favorably by the regulated community.

Despite these successes, JLARC staff found that the overall structure and staffing of the agency were not sufficient for it to ensure uniform compliance with Virginia's charitable gaming statutes. Having given consideration to three policy options presented in the JLARC report, the General Assembly enacted SB 1278 (Colgan) to change the governance structure of the agency. This bill was signed by the Governor on March 22, 2003, and will become effective July 1, 2003. The CGC will be overseen by a policy board, rather than a supervisory board. In addition, the agency's Executive Secretary will be appointed by the Governor. Both of these changes are intended to improve the management and accountability of the agency.

Workforce Training

The 2003 General Assembly implemented several of the recommendations in the *Review of Workforce Training in Virginia* report with the passage of House Bill 2075 (Hogan). The legislation requires that two workforce training programs, Virginia Initiative for Employment Not Welfare (VIEW) and the Food Stamp Employment and Training (FSET) program enter into partnerships with the one-stop centers. As suggested in the report, this will facilitate access and reduce duplication.

As recommended, the new statutory language directs the Virginia Workforce Council to establish performance measures for local workforce investment boards and one-stop centers and evaluate their performance over time. This recommendation was made because there is currently no coordinated oversight of these bodies. The new performance measures will take into account the extent to which local workforce investment boards have obtained funding

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outside of the Workforce Investment Act (WIA) funds. The JLARC report determined that the WIA funds are rarely sufficient to develop a coordinated system of workforce training and outlined the need for local boards to seek out additional funds.

Lastly, the bill implements the JLARC recommendation that the Virginia Workforce Council establish criteria for training providers to be certified to receive WIA funds. Currently, this function is inconsistently performed at the local level.

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